IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Bail Appl..No. 7003 of 2007()

CRIME NO.331/07 OF PUTHUNAGARAM POLICE STATION, PALAKKAD.

: PETITIONERS/ACCUSED NO.S. 1 & 2

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1. KUMARAN, AGED 25 YEARS,
S/O MARIMUTHU, PURAYATHU CHALLA,
VANDITHAVALAM, CHITTUR TALUK,
PALAKKAD DISTRICT.

2. SREENI, AGED 21 YEARS,
S/O MARIMUTHU, PURAYATHU CHALLA,
VANDITHAVALAM, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, PUDUNAGARAM
POLICE STATION, PALAKKAD DISTRICT, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7003 OF 2007

Dated this the 19th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether, there are only 2 accused persons. They face allegations under Secs.452 and 326 of the IPC. The sister of the petitioners, who resides in a separate building, was allegedly attacked by the de facto complainant. As a retaliation, the petitioners allegedly went to the house and attacked the de facto complainant. The de facto complainant has suffered injuries including a fracture. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The petitioners were not the aggressors. They had gone to the house of the sister on coming to know of the attack on her. There they were

victims of aggression. The allegations raised against the petitioners are unfounded, it is submitted.

3. The learned counsel for the petitioners, in these circumstances, prays that anticipatory bail may be granted to the petitioners.

4. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C. The petitioners had proceeded to the house of the de facto complainant with the intention of attacking them, it is submitted. The petitioners may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

5. Having considered all the relevant inputs, I am satisfied that there is merit in the opposition by the learned Public Prosecutor. I find no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. The petitioners must, I agree with the learned Public Prosecutor, resort to the ordinary course of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course.

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge